

Amendments to the Drawings:

With respect to the objection to **Figure 3**, the specification has been amended on page 12, line 10, by changing the reference sign from “300” to “306” as shown above in the Amendments to the Specification. Therefore, the objection to Figure 3 has been overcome by amending the specification rather than the drawing.

Figure 5C is corrected by changing “adminserver_object_level” to “adminserver_object_label” within the parameters for monitor provisioning on line 10 of the drawing as indicated in the Office Action dated April 18, 2007 on pages 3-4.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS/ARGUMENTS

Amendments were made to the specification to correct errors and to clarify the specification. No new matter has been added by any of the amendments to the specification.

Claims 1-25 are pending in the present application. Claims 1-7, 9, 11-18, 20, and 22-25 are amended. Applicants are not conceding in this application that those claims are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious issuance of the application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Claims 1, 12, and 23 are amended to further clarify the claims. Support for the amendments to claims 1, 12, and 23 is located at least on page 10, line 12, through page 11, line 9; on page 11, line 19, through page 14, line 2; on page 18, line 9, through page 19, line 26; and in **Figures 3, 4, and 9**. Claims 2-7, 9, 11, 13-18, 20, 22, and 24-25 are amended to provide consistency and antecedent basis. Support for amendments to claims 2, 13, and 24 is located at least on page 16, lines 7-29. Reconsideration of the claims is respectfully requested.

I. Interview Summary

Applicants thank Examiners Maceeh Anwari and Joseph Del Sole for the courtesies extended to Applicant's representatives during the June 4, 2007 telephone interview. During the interview, Applicants' representatives discussed the distinctions between the proposed claim amendments and the *Lumelsky et al.* reference. Examiners indicated that a more thorough analysis of the arguments for the proposed claim amendments would be conducted. No agreements were reached. The substance of the telephone interview is included in the following remarks.

II. 35 U.S.C. § 101

The Examiner has rejected claims 1-2 and 7 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

The Office Action states:

The claims 1-2 & 7 are rejected as falling under the judicial exception of an abstract idea which lacks a useful, concrete, and tangible result. A claimed series of steps or acts that do not result in a useful, concrete, and tangible result are not statutory within the meaning of 35 USC 101. In the instant case, the claims recite, "providing," and "associating." However, no useful, concrete, and tangible result is claimed. For example, "writing said data," "updating said data," "sending said data" being claimed at the end of the claim may comprise a useful, concrete, and tangible result. Absent such a result, however, the claims are not statutory.

Claims 12-22 are rejected under 25 U.S.C. 101 because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the

meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either “functional descriptive material” or “non-functional descriptive material.” Both types of “descriptive material” are non-statutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recored on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since used of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming non-functional descriptive material, i.e. abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

Claims 23-25 are rejected under 35 U.S.C. 101 because the claims fail to place the invention squarely within one statutory class of invention. On page 5, paragraph 65 of the instant specification, applicant has provided evidence that applicant intends the “medium” to include signals. As such, the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefore not a composition of matter.

Office Action dated April 18, 2007, pages 4-5.

Applicants have amended the claims to overcome this rejection. Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-2, 7, 12-22, and 23-25 under 35 U.S.C. § 101.

III. 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claims 1-25 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

The Office Action states:

It is unclear for one of ordinary skill in the art to determine what the applicant is claiming when referring to “monitor specification” and “resource specifications” in relation to “parameters for a monitor” and “parameters for a resource,” while trying to define a method for “provisioning resource monitors.” The applicant has further stated, along with numerous other instances throughout the claims, phrases such as “resource monitor instance configuration profile for an instance of a given resource monitor for a given resource instance,” with out effectively defining the terms within the disclosure. Ultimately failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Office Action dated April 18, 2007, page 6.

Applicants have amended the claims to further clarify the subject matter and to overcome this rejection. Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-25 under 35 U.S.C. § 112, second paragraph.

IV. **35 U.S.C. § 102, Anticipation Based on Lumelsky**

The Examiner has rejected claims 1-25 under 35 U.S.C. § 102(b) as being anticipated by *Lumelsky et al.*, (United States Patent No.: 6,460,082), hereinafter referred to as *Lumelsky*. This rejection is respectfully traversed.

With respect to independent claims 1, 12, and 23, the Office Action states:

Claim 1:

A method for provisioning resource monitors (Col. 1, lines 10-15), the method comprising: providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a monitor (Figure 1-2 & 4 and Col. 7, lines 38-57; where the service signature reads on both the limitations of at least one monitor specification and parameters for a monitor); providing at least one resource specification, wherein a resource specification includes a definition of parameters for a resource (Figure 1-2 & 4 and Col. 7, lines 28-57; where the resource envelope reads on both the resource specification and a the parameters); and associating at least one monitor specification with a resource specification (Figure 1-2 & 4 and Col. 7, lines 38-57; associates the service signature and the resource envelope).

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Claim 12:

An apparatus for provisioning resource monitors (Col. 1, lines 10-15), the apparatus comprising: means for providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a monitor (Figure 1-2 & 4 and Col. 7, lines 38-57; where the service signature reads on both the limitations of at least one monitor specification and parameters for a monitor); means for providing at least one resource specification, wherein a resource specification includes a definition of parameters for a resource (Figure 1-2 & 4 and Col. 7, lines 28-57; where the resource envelope reads on both the resource specification and a the parameters); and means for associating at least one monitor specification with a resource specification (Figure 1-2 & 4 and Col. 7, lines 38-57; associates the service signature and the resource envelope).

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Claim 23:

A computer program product, in a computer readable medium, for provisioning resource monitors (Col. 1, lines 10-15), the computer program product comprising: instructions for providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a monitor (Figure 1-2 & 4 and Col. 7, lines 38-57; where the service signature reads on both the limitations of at least one monitor specification and parameters for a monitor); instructions for providing at least one resource specification, wherein a resource specification includes a definition of parameters for a resource (Figure 1-2 & 4 and Col. 7, lines 28-57; where the resource envelope reads on both the resource specification and a the parameters); and instructions for associating at least one monitor specification with a resource specification (Figure 1-2 & 4 and Col. 7, lines 38-57; associates the service signature and the resource envelope).

Office Action dated April 18, 2007, pages 7, 10-11, and 14-15.

As amended, claim 1, which is representative of the other rejected independent claim 12 and 23 with regard to similarly recited subject matter, reads as follows:

- I. A method for provisioning resource monitors, the method comprising:
 - providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a resource monitor, and wherein the monitor specification includes both a deployment profile specification, defining a list of parameters that must be defined for each instance of the resource monitor that is deployed, and a response profile specification, defining parameters that are returned by deploying the resource monitor;
 - providing at least one resource specification, wherein a resource specification includes a definition of parameters that must be defined for each instance of a resource, and wherein the resource is the resource to be monitored;
 - associating at least one monitor specification with a resource specification to form at least one resource monitor instance configuration profile; and
 - storing the at least one resource monitor instance configuration profile.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that *Lumelsky* does not identically show every element of the claimed invention arranged as they are in the claims. Specifically, *Lumelsky* does not teach or suggest each and every feature as recited in amended independent claims 1, 12, and 23.

Lumelsky is directed to a system and method for configuring service-oriented resources suitable for the resource management in a media server and more particularly, for resource configuration across distributed media servers. Heterogeneous media servers are configured in terms of homogeneous service-oriented resource units each used to represent a resource allocation commitment from a participating server for provisioning a particular media service on demand. A service unit associated with each different service supported by a media server represents an envelope of resource requirements as needed for provisioning a service. The method includes generating a resource envelope, and additionally compensating, at a media server, for differences between true resource utilization and resource envelope projected by a service unit. Each service unit also comprises a signature representing metadata used to control access to a service unit by defining rights, privileges, and characteristics of services that may use that particular server unit. See *Lumelsky*, Abstract. *Lumelsky* is not directed to provisioning resource monitors. *Lumelsky* discloses that the resource monitors are invoked by the operating system of the

provisioning meta-resource (server) to monitor actual resources utilized in the provisioning of a requested service. *Lumelsky* does not teach or suggest the specific features for provisioning resource monitors as recited in amended independent claims 1, 12, and 23.

With respect to the rejection of the claims 1, 12, and 23, the Office Action refers to the following portion of *Lumelsky*:

Particularly, as illustrated in FIG. 2, the service unit (150) is represented in terms of an allocation vector (151) whose members represent resource allocations for memory (162), disk I/O (163), network bandwidth B/W (164), and CPU resources (161). As will be described in greater detail herein, the service unit allocation vector is referred to herein as a "resource envelope" as needed for provisioning of a media service. The resource envelope represents a bound set according to some criteria over critical-resource requirements associated with the provisioning of a media service. Further, the remote authority maintains a "service signature" or meta-data construct (152) relating to the characteristics of an associated resource envelope. In general, a service signature comprises service management metadata (166) as well as resource management metadata (176). It is an aspect of the present invention that such service signature be used to customize the integrated service-oriented management approach to resource management. In particular, a service signature describes information, hints, and recommendations about things such as access rights, privileges and characteristics of services that can use that particular service unit. For example, the service signature could be used to define access rights (167) and cost (169) characteristics for any particular service unit. The service signature is used as well to deliver hints to the meta-resource about resource management. For example, the service signature could be used to recommend run-time compensation strategies (178) to be used to update the resource envelope for a service unit provided for a given meta-resource type at possibly different loads.

Lumelsky, column 7, lines 28-57.

This portion of *Lumelsky* does not teach or suggest any of the features as amended in independent claims 1, 12, and 23 and is not directed to the specific needs of provisioning resource monitors. *Lumelsky* is directed to provisioning multimedia utilities to paying subscribers. In *Lumelsky*, resource monitors are used to monitor resource utilization when provisioning a media service. See claim 5 of *Lumelsky*.

The claims of the present application are amended to clarify the features. Resource monitors are used to monitor the attributes or states of resources. The present application is directed to a method, apparatus, and computer program product for provisioning resource monitors. As claimed, a monitor specification includes both a deployment profile specification and a response profile specification. A deployment profile specification defines the parameters that must be defined for each instance of the resource monitor that will be deployed. A response profile specification defines the parameters that are returned by deploying the resource monitor. Specifically, *Lumelsky* does not teach or suggest "providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a resource monitor, and wherein the monitor specification includes both a deployment profile

specification, defining a list of parameters that must be defined for each instance of the resource monitor that is deployed, and a response profile specification, defining parameters that are returned by deploying the resource monitor,” as recited in amended claims 1, 12, and 23. In addition, *Lumelsky* does not teach or suggest “associating at least one monitor specification with a resource specification to form at least one resource monitor instance configuration profile; and storing the at least one resource monitor instance configuration profile,” as recited in amended claims 1, 12, and 23.

In view of the above, Applicants respectfully submit that *Lumelsky* does not teach each and every feature of independent claims 1, 12, and 23, as is required under 35 U.S.C § 102(b). In addition, *Lumelsky* does not teach each and every feature of dependent claims 2-11, 13-22, and 24-25 at least by virtue of their dependency on claims 1, 12, and 23, respectively. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1-25 under 35 U.S.C § 102(b).

In addition to being dependent on their respective independent claims, claims 2-11, 13-22, and 24-25 are also distinguished over the *Lumelsky* reference based on the specific features recited therein. With respect to claims 2, 13, and 24, *Lumelsky* does not teach or suggest “retrieving a resource monitor instance configuration profile for an instance of a given resource monitor assigned to an instance of a given resource. In addition, *Lumelsky* does not teach or suggest “receiving a selection of a given resource monitor to be provisioned for the instance of the given resource; and storing a monitor configuration profile for the given resource monitor in association with the resource monitor instance configuration profile,” as recited in claims 3, 14, and 25. Applicants respectfully disagree that Figures 1, 2, and 4 of *Lumelsky* teach the specific features of these claims.

V. **Conclusion**

It is respectfully urged that the subject application is patentable over *Lumelsky* and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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